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8 SHIKEB SADDOZAI,  
9 Plaintiff,  
10 v.  
11 DR. SPENCER, et al.,  
12 Defendants.  
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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

Case No. 18-04511 BLF (PR)

**ORDER DENYING MOTION FOR  
RECONSIDERATION; STRIKING  
MOTION TO FILE UNDER SEAL;  
DENYING MOTION TO AMEND  
COMPLAINT; GRANTING MOTION  
TO STRIKE; GRANTING MOTION  
FOR EXTENSION OF TIME TO  
FILE OPPOSITION**

(Docket Nos. 28, 29, 32, 34, 38, 40)

Plaintiff, a state prisoner, filed the instant *pro se* civil rights action pursuant to 42 U.S.C. § 1983. The Court found the amended complaint, Dkt. No. 10, stated a cognizable claim for deliberate indifference to serious medical needs and ordered the matter served on Defendants Dr. Spencer and Nurse Amanda at the San Mateo County Jail. Dkt. No. 14. Defendants filed a motion for summary judgment on January 30, 2020. Dkt. No. 31. The Court addresses several pending motions below.

**DISCUSSION**

**A. Motions Re Appointment of Counsel**

The Court denied each of Plaintiff's three motions for appointment of counsel for

1 lack of exceptional circumstances, with the last order filed on December 16, 2019. Dkt.  
2 Nos. 9, 14, 25. On January 27, 2020, Plaintiff filed a motion for an extension of time to  
3 file a motion for reconsideration of the last court order, and subsequently the motion for  
4 reconsideration asserting new grounds on March 5, 2020. Dkt. Nos. 28, 38. The Court  
5 grants the motion for an extension of time such that the reconsideration motion is deemed  
6 timely filed. Although titled differently, these two papers are essentially the same. *Id.*  
7 Plaintiff additionally requests a preliminary injunction and court order for prison officials  
8 to “cease and desist violence, harassment and retaliation to interfere[e] with plaintiff’s civil  
9 action.” Dkt. No. 38 at 2. Plaintiff is currently being housed at Corcoran State Prison  
10 (“CSP”), which is not a party to this action. Accordingly, the Court has no jurisdiction  
11 over CSP or any of its employees in this action to issue an injunctive order against them.  
12 Plaintiff must file any new claims against CSP employees in a separate civil rights action.

13 Plaintiff asserts the following grounds for appointment of counsel: lack of legal  
14 material and access to the law library and legal assistance, and the need for assistance to  
15 conduct discovery. Dkt. No. 38 at 4-7. The Court notes that despite the challenges he  
16 alleges, Plaintiff managed to file another motion to amend the complaint and the proposed  
17 amended complaint. Dkt. Nos. 32, 37. With respect to discovery, Plaintiff recently filed a  
18 motion requesting more time to conduct discovery which is generally articulate and  
19 organized. Accordingly, the motion for reconsideration is **DENIED** for lack of changed  
20 circumstances. *See Agyeman v. Corrections Corp. of America*, 390 F.3d 1101, 1103 (9th  
21 Cir. 2004); *Rand v. Rowland*, 113 F.3d 1520, 1525 (9th Cir. 1997); *Terrell v. Brewer*, 935  
22 F.2d 1015, 1017 (9th Cir. 1991); *Wilborn v. Escalderon*, 789 F.2d 1328, 1331 (9th Cir.  
23 1986). This denial is without prejudice to the Court’s *sua sponte* appointment of counsel  
24 at a future date should the circumstances of this case warrant such appointment.

25 **B. Motion to Seal Documents**

26 Defendants filed a motion for summary judgment, Dkt. No. 31, along with an  
27 administrative motion to file under seal certain documents in order to protect Plaintiff’s

1 medical privacy, Dkt. No. 29. Plaintiff filed opposition to the motion. Dkt. No. 33. In  
2 reply, Defendants withdraw their motion to seal, inferring by his opposition that Plaintiff  
3 consents to his unredacted medical records being filed with the Court and being publicly  
4 accessible. Dkt. No. 36. There being no dispute on this issue, Defendants' motion to seal  
5 shall be STRICKEN, and the documents at issue shall not be filed under seal.

6 **C. Plaintiff's Motion to Amend and Defendants' Motion to Strike**

7 After Defendants filed their summary judgment motion on January 30,2020,  
8 Plaintiff filed a motion to amend the complaint on February 10, 2020. Dkt. No. 32.  
9 Defendants filed opposition to the motion. Dkt. No. 35. On the same day that Defendants  
10 filed their opposition, March 5, 2020, Plaintiff filed a proposed amended complaint which  
11 would constitute a second amended complaint ("SAC"). Dkt. No. 37. On March 13, 2020,  
12 Defendants filed a motion to strike the SAC. Dkt. No. 40. Plaintiff did not file a reply in  
13 response to Defendants' opposition to his motion, nor did he file an opposition to  
14 Defendants' motion to strike.

15 At this late stage in the proceedings, Plaintiff may only file an amended complaint  
16 under Federal Rule of Civil Procedure 15(a)(2), which provides that a party may amend its  
17 pleading "only with the opposing party's written or the court's leave. The court should  
18 freely give leave when justice so requires." Fed. R. Civ. P. 15(a)(2).<sup>1</sup> Federal Rule of  
19 Civil Procedure 15(a) is to be applied liberally in favor of amendments and, in general,  
20 leave shall be freely given when justice so requires. *See Janicki Logging Co. v. Mateer*, 42  
21 F.3d 561, 566 (9th Cir. 1994); *cf. id.* (attempt to amend complaint requiring amendment of  
22 scheduling order under Fed. R. Civ. P. 16 must be based upon good cause). "In the  
23 absence of any apparent or declared reason—such as undue delay, bad faith or dilatory  
24 motive on the part of the movant, . . . undue prejudice to the opposing party by virtue of

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<sup>1</sup> As Defendants correctly point out, the time for Plaintiff to file an amended complaint as a  
27 matter of course under Rule 15(a)(1)(B) expired 21 days after service of the amended  
complaint, i.e., on January 21, 2020. Dkt. No. 40 at 3-4, citing Fed. R. Civ. P. 15(a)(1)(B).

1 allowance of the amendment, futility of amendment, etc.—the leave sought should, as the  
2 rules require, be ‘freely given.’” *Hall v. City of Los Angeles*, 697 F.3d 1059, 1073 (9th  
3 Cir. 2012) (citations omitted). Leave need not be granted where the amendment of the  
4 complaint would cause the opposing party undue prejudice, is sought in bad faith,  
5 constitutes an exercise in futility, or creates undue delay. *See Janicki Logging Co.*, 42 F.3d  
6 at 566; *Roberts v. Arizona Bd. of Regents*, 661 F.2d 796, 798 (9th Cir. 1981). A district  
7 court’s discretion to deny leave to amend is particularly broad where the plaintiff has  
8 previously filed an amended complaint. *Wagh v. Metris Direct, Inc.*, 363 F.3d 821, 830  
9 (9th Cir. 2003); *Ferdik v. Bonzelet*, 963 F.2d 1258, 1261 (9th Cir. 1992).

10 The Court found the amended complaint filed on December 31, 2018, stated a  
11 cognizable claim against the two named Defendants, Dr. Spencer and Nurse Amanda, at  
12 the San Mateo County jail for deliberate indifference to serious medical needs. Dkts. No.  
13 10, 14. In his motion to amend, Plaintiff requests leave to amend in order to include  
14 additional defendants: San Mateo County Correctional Health Services [“CHS”], Redwood  
15 City, and the Sheriff of San Mateo County Jail Maguire Facility, Dkt. No. 32 at 1; he later  
16 names these Defendants in the SAC. Dkt. No. 37 at 2. Plaintiff alleges that Dr. Spencer  
17 and Nurse Amanda were acting “in the capacity as an agent, servant and employee” who  
18 “provided medical services under contract through defendants, [CHS], acting within the  
19 course and scope of their employment and under color and scope of their employment.”  
20 *Id.* at 4. Plaintiff also claims that the Sheriff of San Mateo County and Redwood City  
21 “failed to provide adequate medical staff or qualified medical staff, and or medical  
22 services, and failed to remedy unlawful conditions that they know about and ignored  
23 knowing they will not be held accountable for damages that resulted from a general policy,  
24 pattern, and or practice and defendants medical provider, [CHS], unwillingness to respond  
25 to inmate requests for treatment....” *Id.* Plaintiff claims that the Sheriff “conspired or  
26 acted jointly under the color of state law pursuant to policy or custom with [Redwood  
27 City],” who are “county policymakers at least for the purpose of the jail management....”

1 *Id.* at 5-7.

2 Defendants argue that Plaintiff's original complaint, Dkt. No. 1, named San Mateo  
3 County Sheriff Bolanos and CHS as defendants, and that although the Court granted  
4 Plaintiff leave to amend to attempt to allege specific facts against them, Plaintiff  
5 effectively "dropped" them from this action by not including them in the amended  
6 complaint, Dkt. No. 10. Dkt. No. 40 at 4-5. Defendants also assert that Plaintiff filed the  
7 SAC in bad faith since the motion for leave to do so was still pending at the time, and that  
8 they will also suffer undue prejudice since their summary judgment is currently pending  
9 before the Court and they would have to respond to a third round of pleadings and file new  
10 dispositive motions. *Id.* at 6. Defendants move for the SAC be stricken in its entirety, or  
11 in the alternative, be dismissed for failure to state a claim. *Id.*

12 The Court finds that leave to file the SAC should be denied based on undue delay  
13 and Plaintiff's failure to explain the reason for the delay, as well undue prejudice to  
14 Defendants. *See Janicki Logging Co.*, 42 F.3d at 566. As Defendants point out, Plaintiff  
15 first named the Sheriff of San Mateo County and CHS in the original complaint but did not  
16 allege any specific facts against them. Dkt. No. 1. On December 10, 2018, the Court  
17 dismissed the complaint with leave to amend so that Plaintiff could attempt to state  
18 sufficient facts to state a claim against them. Dkt. No. 9. In the order, the Court laid out  
19 the legal standard to state a claim against individual defendants and against local  
20 governments under *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 690 (1978). *Id.* at 3.  
21 When Plaintiff filed an amended complaint on December 31, 2018, he did not include the  
22 Sheriff or CHS in the complaint, indicating either that he could not name a claim against  
23 them individually or under *Monell* or that he was simply foregoing attempting to do so.  
24 Dkt. No. 10. Then he waited over 14 months thereafter to file another amended complaint  
25 on March 5, 2020, naming these Defendants and attempting to state a claim against them.  
26 Dkt. No. 37. Plaintiff provides no explanation for the delay in his motion and has filed no  
27 reply to Defendants' opposition, or an opposition to their motion to strike the SAC to

1 refute their assertion that they would be unduly prejudiced by another amendment.<sup>2</sup>  
2 Furthermore, the fact that Plaintiff has already filed an amended complaint gives the court  
3 broad discretion to deny leave to amend now. *See Wagh*, 363 F.3d at 830. Accordingly,  
4 the motion to amend is DENIED. Dkt. No. 32. Defendants' motion to strike the SAC is  
5 GRANTED. Dkt. No. 40.

6 **D. Motion for Extension of Time to Complete Discovery**

7 After Defendants filed their summary judgment motion on January 30, 2020, Dkt.  
8 No. 31, Plaintiff filed a motion for extension of time to complete discovery "so that  
9 plaintiff can get evidence to defeat summary judgment." Dkt. No. 34 at 2. The Court  
10 construes the motion as one for an extension of time to file opposition to Defendants'  
11 summary judgment motion. Defendants oppose the motion as untimely and unsupported  
12 by good cause. Dkt. No. 39.

13 The motion was filed on February 28, 2020, but is dated February 10, 2020. Dkt.  
14 No. 34 at 5. With the benefit of the mailbox rule,<sup>3</sup> the Court finds the motion is timely  
15 filed within the deadlines provided in the Court's Order of Service. Dkt. No. 14 at 5.  
16 Plaintiff also shows good cause for an extension of time based on delays in his mail and  
17 limited access to the prison law library. Dkt. No. 34 at 2-4. Accordingly, the motion is  
18 GRANTED. Plaintiff shall file an opposition in the time set forth below.

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23     <sup>2</sup> Defendants filed opposition to Plaintiff's motion to amend on March 5, 2020, Dkt. No.  
24     35, such that Plaintiff's reply thereto was due by March 19, 2020. Defendants filed their  
25     motion to strike on March 13, 2020, Dkt. No. 40, such that Plaintiff's opposition was due  
26     by March 27, 2020. He filed neither. The Court notes that Plaintiff filed a letter on April  
27     13, 2020, which is dated April 7, 2020, asserting lack of access to the prison law library  
28     and its resources. Dkt. No. 42. He makes no indication therein that this lack of access has  
   hindered his ability to file a response to any of Defendants' filings.

27     <sup>3</sup> *See Faile v. Upjohn Co.*, 988 F.2d 985, 988 (9th Cir. 1993).

## CONCLUSION

For the reasons discussed above, the Court orders as follows:

1. Plaintiff's motion for reconsideration of appointment of counsel is DENIED.  
Dkt. Nos. 28, 38.

2. Defendants' administrative motion to file under seal has been withdrawn. Dkt. No. 36. Accordingly, the motion is STRICKEN. The Clerk shall terminate the motion.

3. Plaintiff's motion to amend is DENIED. Dkt. No. 32. Defendants' motion to strike the amended complaint is GRANTED. Dkt. No. 40. The second amended complaint filed on March 5, 2020, shall be STRICKEN. Dkt. No. 37.

4. Plaintiff's motion for an extension of time to complete discovery and file an opposition to Defendants' summary judgment is GRANTED. Dkt. No. 34. Plaintiff's opposition shall be filed **no later than forty-five (45) days from the date this order is filed.** Defendants shall file a reply brief no later than **twenty-one (21) days** after Plaintiff's opposition is filed.

This order terminates Docket Nos. 28, 29, 32, 34, 38, and 40.

## IT IS SO ORDERED.

**Dated: April 16, 2020**

Beth Labson Freeman  
BETH LABSON FREEMAN  
United States District Judge